

**STATE BANK OF SOUTH AUSTRALIA (TRANSFER OF
UNDERTAKING) ACT 1994 No. 47**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Definitions
 4. Act binds the Crown
 5. Transfer of assets and liabilities to BSAL
 6. Conditions of transfer
 7. Transitional provisions
 8. Direct payment orders to accounts transferred to BSAL
 9. Registering authorities to note transfer
 10. Exclusion of obligation to inquire
 11. Re-transfer of assets or liabilities
 12. Stamp and other duties or taxes
 13. Evidence
 14. Transfer of staff
 15. Act overrides other laws
 16. Effect of things done or allowed under Act
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**STATE BANK OF SOUTH AUSTRALIA (TRANSFER OF
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NEW SOUTH WALES



Act No. 47, 1994

An Act to provide for the transfer of part of the undertaking of the State Bank of South Australia to a company formed to carry on the business of banking under the Corporations Law; and for other purposes. [Assented to 2 June 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the State Bank of South Australia (Transfer of Undertaking) Act 1994.

Commencement

2. This Act commences on the date of assent.

Definitions

3. In this act:

“**appointed day**” means the day fixed as the appointed day by proclamation under the South Australian Act;

“**asset**” means property including property held in a fiduciary capacity;

“**BSAL**” means the public company with the name “*Bank of South Australia Limited*” formed under the Corporations Law;

“**CEO of BSAL**” means the chief executive officer of BSAL (however described) or a delegate of the chief executive officer;

“**corresponding law**” means the South Australian Act or a law of another State or of a Territory providing for the transfer of assets and liabilities between:

(a) SBSA or SBSA subsidiaries; and

(b) BSAL;

“**document**” includes any disc, tape or other medium in which information is stored;

“**guarantee**” includes indemnity;

“**instrument**” includes a legislative instrument and a judgment, order or process of a court;

“**legal proceedings**” includes an arbitration and an administrative proceeding;

“**liability**” means a present, future or contingent liability (arising either at law or in equity) and includes a duty or non-pecuniary obligation;

“**property**” means real or personal property and includes:

(a) a chose in action; and

(b) a present, future or contingent right, privilege, interest or power;

“SBSA” means the State Bank of South Australia;

“SBSA subsidiary” or **“subsidiary”** means any company specified in, or classified by proclamation under, the South Australian Act as a SBSA subsidiary;

“security” means:

- (a) a mortgage, charge, lien, or pledge; or
- (b) a guarantee; or
- (c) any other security for, or instrument relating to, the payment of money or the discharge of any other liability;

“South Australian Act” means the State Bank (Corporatisation) Act 1994 of South Australia, as amended from time to time;

“South Australian Treasurer” means the Treasurer of South Australia, and includes, in relation to a particular power or function under this Act, a Minister of the Crown in right of South Australia exercising or performing the power or function by delegation of the Treasurer of South Australia;

“transfer period” means the period beginning on the day fixed by proclamation under section 2 (Commencement) of the South Australian Act to bring that Act into operation and ending when no further order for the transfer of assets or liabilities may be made under that Act;

“transferred asset” means an asset transferred to BSAL (and not re-transferred to SBSA or a SBSA subsidiary) under this Act or a corresponding law;

“transferred liability” means a liability transferred to BSAL (and not re-transferred to SBSA or a SBSA subsidiary) under this Act or a corresponding law.

Act binds the Crown

4 This Act binds the Crown in right of New South Wales.

Transfer of assets and liabilities to BSAL

5. (1) The New South Wales Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, transfer assets or liabilities (or both) of SBSA or a SBSA subsidiary to BSAL.

(2) An order under this section must be made within the transfer period.

(3) If an order is made under this section on or before the appointed day, it takes effect (subject to any contrary provision in the order) on the appointed day.

(4) An order under this section may be varied or revoked by the Treasurer, with the concurrence of the South Australian Treasurer, by further order in writing made before the order takes effect.

(5) A transfer of an asset or liability under this section operates by force of this Act and despite the provisions of any other law or instrument.

(6) The transfer of a liability under this section operates to discharge the body corporate from which the liability was transferred from the liability.

Conditions of transfer

6. The transfer of assets and liabilities under this Act has effect on the conditions fixed by the South Australian Treasurer under the South Australian Act.

Transitional provisions

7. The following transitional provisions apply in relation to transferred assets and liabilities:

- (a) if an instrument or other document, or oral agreement, understanding or undertaking, is applicable to a transferred asset or liability, then for the purpose of construing the instrument or other document, or oral agreement, understanding or undertaking (so far as it applies to the transferred asset or liability):
 - (i) a reference to SBSA or a SBSA subsidiary is to be construed as a reference to BSAL; and
 - (ii) a reference to a branch, office, or agency of SBSA or a SBSA subsidiary is to be construed as a reference to the corresponding branch, office, or agency of BSAL, or a branch, office or agency designated by the CEO of BSAL as the corresponding branch, office or agency; and
 - (iii) a reference to an officer of SBSA or a SBSA subsidiary is to be construed as a reference to the corresponding officer of BSAL or an officer designated by the CEO of BSAL as the corresponding officer;
- (b) the relationship of banker and customer existing between SBSA and a customer in relation to a transferred asset or liability immediately before the transfer took effect continues between BSAL and the customer after the transfer takes effect and gives rise to the same rights (including rights of set-off) and the same liabilities as would have arisen if there had been no transfer;

State Bank of South Australia (Transfer of Undertaking) Act 1994 No. 47

- (c) an instruction, order, mandate, authority or notice given to SBSA or a SBSA subsidiary before the transfer takes effect is, so far as it is referable to a transferred asset or liability, taken to have been given to BSAL;
- (d) if a security held by SBSA or a SBSA subsidiary is referable to a transferred asset or liability, then, so far as it is referable to the transferred asset or liability:
 - (i) the security is available to BSAL as security for the discharge of the liabilities to which it relates including, where the security extends to future liabilities, any such liabilities incurred after the transfer; and
 - (ii) BSAL is entitled to the same rights and priorities and subject to the same liabilities in relation to the security as those to which SBSA or the SBSA subsidiary would have been entitled or subject if there had been no transfer;
- (e) BSAL is entitled to possession of all documents that are entirely referable to a transferred asset or liability and is entitled to access to, and copies of, all documents that are referable to both a transferred asset or liability and any other asset or liability that is not transferred;
- (f) a negotiable instrument or order for payment drawn by or on, or accepted or endorsed by SBSA, is (if SBSA's liability under the instrument or order is a transferred liability) payable by BSAL in the same way as if it had been drawn by or on, or accepted or endorsed (as the case may be) by BSAL;
- (g) a cheque drawn on an account transferred to BSAL is, although expressed to be drawn on the account formerly at SBSA, taken to have been drawn on the account at BSAL;
- (h) if an account in respect of which a credit or debit card was issued by SBSA or a SBSA subsidiary is transferred, the card is taken to have been issued by BSAL and to be the property of BSAL;
- (i) if a transferred asset consists of rights to the possession or use of property under a lease or other agreement, BSAL may exercise those rights without giving rise to any liability on the part of the body corporate from which the asset was transferred for parting with possession of the property, or permitting the possession or use of the property by another person, contrary to the terms of the lease or agreement;
- (j) BSAL has the same right to ratify a contract or agreement relating to an asset or liability transferred to it from SBSA or a SBSA subsidiary as SBSA or the SBSA subsidiary would have had if there had been no transfer;

- (k) legal proceedings in respect of a transferred asset or liability commenced by or against SBSA or a SBSA subsidiary must (subject to discontinuance) be continued and completed by or against BSAL;
- (l) in legal proceedings relevant to a transferred asset or liability:
 - (i) BSAL will have the same rights and privileges as SBSA or a SBSA subsidiary would have had if there had been no transfer; and
 - (ii) a document that could have been given in evidence by or against SBSA or a SBSA subsidiary if there had been no transfer may be given in evidence by or against BSAL;
- (m) BSAL may execute an instrument discharging, surrendering, transferring or otherwise dealing with a transferred asset or liability either in its own name or in the name of the body corporate from which the asset or liability was transferred to BSAL.

Direct payment orders to accounts transferred to BSAL

8 An instruction, order or mandate given to a bank or other financial institution for payments to be made from an account at the bank or other institution to an account at SBSA is, if the account at SBSA is transferred to BSAL under this Act or a corresponding law, taken to be an instruction, order or mandate for the payments to be made to the account at BSAL.

Registering authorities to note transfer

9. (1) The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions:

- (a) must on the application of BSAL, lodged in registrable form, register or record in the appropriate manner the transfer to BSAL of any transferred asset or liability; and
- (b) must register an instrument in registrable form, executed by BSAL, relating to property that is a transferred asset even though BSAL is not registered as the proprietor of the property, subject to subsection (3).

(2) If property is registered in the name of SBSA or a SBSA subsidiary, the Registrar-General or other registering authority may register a dealing with the property by the body corporate in whose name the property is registered or by BSAL without being concerned to inquire whether the property is or is not a transferred asset.

(3) The Registrar-General is not required to register an instrument referred to in subsection (1) (b) if the Registrar-General has been given evidence that the property has ceased to be that of BSAL.

Exclusion of obligation to inquire

10. (1) A person dealing with SBSA or a SBSA subsidiary is not obliged to inquire whether property to which a transaction relates is or is not a transferred asset.

(2) A person dealing with BSAL is not obliged to inquire whether property to which a transaction relates is or is not a transferred asset.

(3) If SBSA or a SBSA subsidiary was entitled to property before the appointed day, and after that day, SBSA or the SBSA subsidiary, or BSAL, purports to deal with the property as if entitled to it, the transaction is valid even though the body corporate purporting to deal with the property is not entitled to do so because the property is, or is not, a transferred asset.

(4) However, this section does not validate a transaction if the party dealing with SBSA, the SBSA subsidiary or BSAL has actual notice of the deficiency of title or acts fraudulently.

Re-transfer of assets or liabilities

11. (1) The New South Wales Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, re-transfer assets or liabilities (or both) from BSAL to SBSA or a SBSA subsidiary.

(2) An order under this section must be made within the transfer period.

(3) The re-transfer of a liability under this section operates to discharge BSAL from the liability.'

(4) The provisions of this Act relating to transferred assets or liabilities apply in a reciprocal way in relation to assets or liabilities re-transferred under this section with such modifications and exclusions as are necessary in the context.

Stamp and other duties or taxes

12. (1) No stamp duty, financial institutions duty or debits tax is payable under a law of the State in respect of:

- (a) any transfer effected by order of the New South Wales Treasurer under this Act; or
- (b) an application or entry made, or receipt given or anything else done for a purpose connected with, or arising out of, such a transfer.

State Bank of South Australia (Transfer of Undertaking) Act 1994 No. 47

(2) No person has an obligation under a law of the State imposing stamp duty, financial institutions duty or debits tax:

- (a) to lodge a statement or return relating to a matter referred to in subsection (1); or
- (b) to include in a statement or return a record or information relating to such a matter.

Evidence

13. (1) A certificate issued by the South Australian Treasurer certifying that an asset or liability is or is not a transferred asset or liability is to be accepted in any legal proceedings as evidence of the matter so certified.

(2) An apparently genuine document purporting to be a certificate of the South Australian Treasurer under subsection (1) is to be accepted in any legal proceedings as such a certificate in the absence of proof to the contrary.

Transfer of staff

14. (1) The New South Wales Treasurer may, with the concurrence of the South Australian Treasurer, by order in writing, transfer staff from the employment of SBSA or a SBSA subsidiary to the employment of BSAL.

(2) A transfer under this section does not:

- (a) affect the employee's remuneration; or
- (b) prejudice the employee's existing or accruing rights to recreation leave, sick leave or long service leave; or
- (c) interrupt continuity of service; or
- (d) constitute a retrenchment or redundancy.

(3) A transfer under this section does not give rise to any right to damages or compensation.

Act overrides other laws

15. This Act has effect despite the provisions of any other law.

Effect of things done or allowed under Act

16. Nothing done or allowed under this Act:

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

State Bank of South Australia (Transfer of Undertaking) Act 1994 No. 47

- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity, by custom, or in any other way); or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
 - (f) releases a surety or other obligee wholly or in part from an obligation.
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*[Minister's second reading speech made in—
Legislative Assembly on 4 May 1994
Legislative Council on 12 May 1994]*